(1930) 07 PAT CK 0018

In the Patna High Court

Tugan Mull APPELLANT

Vs

Ladhu Lal and Others RESPONDENT

Date of Decision : 15-07-1930

Acts Referred:
Limitation Act, 1963 — Article 183, 19, 20

Citation : AIR 1931 Patna 218

Hon'ble Judges : Fazl Ali, J;Chatterji, J

Bench : Full Bench

Judgement

Fazl Ali, J.—It appears that on 15th May 1914 a decree was passed on the original side of the Calcutta High Court against the appellant and certain other persons. This decree was executed in the year 1916 against two of the judgment-debtors and, a writ of arrest being issued against them as applied for by the decree-holders, a sum of Rs. 600 was realized in partial satisfaction of the decree on or after 17th April 1916. In February 1926 the respondents who had meanwhile succeeded to the interest of the original decree-holders applied to the Calcutta High Court for transmission of the decree to Pakaur for execution and the decree was accordingly transmitted. As it appeared however that the provisions of Order 21, Rule 16, Civil P.C., 1908, had not been complied with, the execution petition was struck off on 2nd July 1926 and the respondents thereupon applied to the Calcutta High Court for removing the defect and an order from the Calcutta High Court substituting the present decree-holders was received at Pakaur on 14th December 1927, and copies of the amended decree and the certificates of nonsatisfaction were also received on 31st March 1928. On 12th April 1928, the respondents filed an execution petition in which they prayed for the realization of the dues from the appellant alone. Thereupon the appellant preferred a number of objections, one of which was that the execution was barred by limitation. The Subordinate Judge of Pakaur overruled all the objections of the appellant including the one regarding limitation and hence this appeal.

2. The only question which was urged before us was that of limitation. It was conceded that the decree being passed on the original side of the Calcutta High Court the matter would be governed by Article 183, Lim. Act, but the whole controversy centered round the proviso to Article 183, according to which when some part of the principal money secured by the decree or some interest on such money has been paid, the period of 12 years prescribed by the statute is to be computed from the date of the last payment. It was urged in the first instance that there was no proof that as a matter of fact the sum of Rs. 600 had been realized from some of the judgment-debtors in execution of the decree. This argument however cannot be accepted for a moment in the face of the certificate of part satisfaction granted by the Calcutta High Court which clearly mentions that the sum of Rs. 600, had been realized in partial satisfaction of the decree.

3. The next question which was raised was whether a sum of money realized by execution can be considered to be part payment within the meaning of Article 183, Lim. Act. It was also urged that even assuming that the sum of Rs. 600 had been paid to the decree-holders within the meaning of the article that payment would revive the decree only against the person who had paid it and not against the appellant. In my opinion however none of these objections can prevail. It appears to me that the provisions of Article 183 regarding acknowledgments as well as payments are self-contained and must be read independently of Sections 19 and 20, Lim. Act.

4. This is exactly the view which seems to have been taken by Srinivasa Aiyangar, J., in Arjee Prabappa Chetti Vs. Koneti Desikachari, where that learned Judge pointedly drew attention to the difference between the language of Section 20 and that of Article 183 and observed:

In Section 20, Lim. Act, where a part payment is referred to as giving rise to a further starting of limitation, it is significant that it is prescribed that, for the purpose of saving limitation, the part of the principal of a debt should be paid by the judgment-debtor or by his agent duly authorized in that behalf, but in Article 183. however there are no such words to be found after the words "some part of the principal money secured thereby or some interest on such money has been paid." The payment is not therefore required to be made either by the debtor or by some person acting on his behalf. The difference in the wording is significant and, I cannot help thinking, fully intended. It follows therefore that even if the payment is for the judgment-debtor or on his own account, it would be a payment that will save limitation giving rise to a fresh starting point.

5. I find in the decision of this case ample authority for the proposition that the word "payment" has been used in Article 183 in a wider sense than in Section 20, Lim. Act, and as the word "payment" as used in Article 183 is not qualified in any way as to the mode in which the payment is to be made or as to the person who is to make it, I am of opinion that the payment of Rs. 600 on or about 17th April 1916 provided a fresh starting point for the limitation and the execution was not time barred.

6. Another point which was urged by Mr. Mazumdar appearing for the appellant was that there is no proof in this case as to whether the sum of Rs. 600 was paid as part of the principal or interest or on account of the costs of the suit and that the decree-holder cannot take advantage of Article 183 unless there is a clear finding on that point. It appears to me however that there is absolutely no substance in this objection also. It must be remembered that what this article provides is that in order to save limitation some part of the principal money secured by the decree or some interest on such money has been paid. It is clear that the principal money secured by the decree includes costs and therefore the payment of Rs. 600 comes within the meaning of the article. Mr. Mazumdar also invited us to go into the question whether there was a revivor of the decree or not by virtue of the order of the Calcutta High Court dated 16th August 1926 and he asks us to consider the effect of a number of decisions cited by him. I consider however that in view of my finding that the payment of Rs. 600 saves the limitation in this case, it is unnecessary to enter into this question. The result is that the appeal is dismissed with costs.

Chatterji, J.

7. I agree.

